

STATE OF MICHIGAN
COURT OF APPEALS

MANUFACTURED HOUSING PARTNERS 2,
LLC,

UNPUBLISHED
March 14, 2006

Plaintiff-Appellant,

v

VILLAGE OF STOCKBRIDGE,

No. 258427
Ingham Circuit Court
LC No. 00-091825-CK

Defendant-Appellee.

Before: Smolenski, P.J., Whitbeck, C.J., and O’Connell, J.

PER CURIAM.

In this riparian rights dispute, plaintiff appeals as of right an order granting summary disposition to defendant. We affirm.

Plaintiff is a riparian landowner on Portage Creek in Ingham County. Defendant, also a riparian landowner, operates a wastewater treatment facility on its property, resulting in the discharge of pollutants into the creek. Seeking to develop its land for residential use, plaintiff requested a permit to discharge treated effluent into the creek, pursuant to MCL 324.3112. The Michigan Department of Environmental Quality (MDEQ) denied plaintiff a permit, concluding that high effluent levels in the creek precluded further wastewater discharge. Plaintiff brought the instant litigation, alleging *inter alia*, trespass-nuisance and inverse condemnation. It claimed that defendant was discharging into the creek without a permit, in violation of § 3112. Plaintiff sought relief based upon defendant’s alleged interference with its purported riparian right to discharge wastewater.

Plaintiff first argues that the circuit court improperly dismissed its trespass-nuisance claim. We agree. We review de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court did not dismiss all of plaintiff’s trespass-nuisance claim, only that portion of the claim that depended on a finding that defendant’s discharge interfered with plaintiff’s right to discharge similar effluent into the same waters. Ironically, plaintiff argues that defendant’s discharge is a nuisance because it does not have permission to discharge, but plaintiff does not currently have permission either, so it fails to explain how the excess discharge interferes with a vested property right. Plaintiff is actually complaining that defendant’s illegal dumping interferes with its ability to receive permission from the MDEQ, but this is not an invasion of property on which plaintiff can base a

trespass-nuisance claim. *Continental Paper & Supply Co v Detroit*, 451 Mich 162, 164; 545 NW2d 657 (1996). Plaintiff's recourse on this limited issue is to the MDEQ.

Plaintiff next argues that the circuit court improperly dismissed its inverse condemnation claim, which was based on defendant's deprivation of plaintiff's same nonexistent right to discharge effluent. We disagree with plaintiff. We review de novo the constitutionality of an alleged taking. *Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 248; 701 NW2d 144 (2005). To prevail on an inverse condemnation suit, a plaintiff property owner must establish that: (1) a governmental entity's actions caused a substantial decline in value to the plaintiff's property; and (2) the governmental entity "abused its legitimate powers in affirmative actions directly aimed at the plaintiff's property." *Heinrich v Detroit*, 90 Mich App 692, 700; 282 NW2d 448 (1979).

Accepting plaintiff's allegations as true, it has failed to establish a claim for inverse condemnation. The alleged interference with plaintiff's property right is the denial of a permit to dispose of wastewater. Defendant is, at best, an incidental cause of this denial. The MDEQ, not defendant, precluded plaintiff from discharging waste. Further, plaintiff fails to plead that defendant's actions were specifically directed at its property. Lastly, plaintiff fails to assert the taking of a recognizable property right given the statute's preemption of the right to discharge effluent without a permit. Therefore, plaintiff's claim of inverse condemnation necessarily fails.

Affirmed.

/s/ Michael R. Smolenski
/s/ William C. Whitbeck
/s/ Peter D. O'Connell